

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEEMELL SPENCER,

Plaintiff,

v.

CITY OF DETROIT, et al.,

Defendant.

CIVIL ACTION NO. 03-71470

DISTRICT JUDGE JOHN CORBETT O'MEARA

MAGISTRATE JUDGE DONALD A. SCHEER

**ORDER DENYING PLAINTIFF'S MOTION
TO SUPPLEMENT RECORD**

Plaintiff's Motion to Supplement Record was referred to the undersigned magistrate judge for hearing and determination. The motion was brought on for hearing on December 20, 2005. Notwithstanding the fact that plaintiff filed the Motion to Supplement Record, his counsel advised the court that plaintiff objects to the relief sought. Counsel further explained that the motion represents an effort to accommodate opposing counsel, who seek to add to the record of this court a transcript of deposition testimony by Dwight Pearson on July 12, 2004 in a civil action then pending in the Circuit Court for the County of Wayne, in Case No. 02-213609-NZ. There is no evidence that either party in this case offered the transcript as evidence prior to the entry of this court's Judgment, or that the court relied in any way upon the transcript in entering the Judgment now on appeal.

Federal Rule of Appellate Procedure 10(e)(2) allows correction of the record either by agreement of the parties, by order of the district court, or by order of the Court of Appeals. It is clear, however, from the language of the Rule and from the decisions of the United States Court of Appeals for the Sixth Circuit that "[t]he purpose of the Rule is to

allow the [] court to correct omissions from or misstatements in the record for appeal, not to introduce new evidence in the Court of Appeals.” “A party may not bypass the fact finding process of the lower court and introduce new facts in brief on appeal.” Inland Bulk Transfer Co. v. Cummins Engine Co., 332 F.3d 1007, 1012 (6th Cir. 2003) (citations omitted).

Plaintiff’s motion simply attempts to add new material to the record of this case that was never considered by the district court judge in rendering his decision. Such a course is not permitted under the Rule.

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Supplement Record is denied.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: December 22, 2005

CERTIFICATE OF SERVICE

I hereby certify on December 22, 2005 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on December 22, 2005. **Kevin Laidler.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217